

1 BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
2 STATE OF FLORIDA
3 INQUIRY CONCERNING A SUPREME COURT
4 JUDGE: GREGORY P. HOLDER CASE NO.: SC03-1171
5 NO.: 02-487
6 _____ /

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DEPOSITION TRANSCRIPT

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11 DEPOSITION OF: JEFFREY DOWNING, AUSA

12 TAKEN AT: Regency Reporting Service, Inc.
13 Courthouse Plaza, Suite 103
14 625 East Twiggs Street
 Tampa, Florida 33602

15 DATE & TIME: August 31, 2004
16 Commencing at 10:00 a.m.

17 REPORTED BY: Penny M. Appleton, RPR

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1 A P P E A R A N C E S

2

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I N D E X

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E X H I B I T S

EXHIBIT		DESCRIPTION	PAGE
U.S. Attorney's 1		Letter to Mr. Pillans	4
" 2		Letter to Ms. Houser	5
Respondent's 1		Hoard Paper	10
" 2		Purported Holder Paper	10
" 3		Red well folder	10
" 4		Letter to Ms. Kennerly	30

(Respondent's Exhibit Numbers 1, 2 and 3 were retained
by Mr. Pillans per stipulation.)

1 Thereupon,

2 JEFFREY DOWNING,

3 a witness, having been first duly sworn, upon his oath,

4 testified as follows:

5 EXAMINATION

6 BY MR. WEINSTEIN:

7 Q Sir, would you state your name for the record?

8 A Jeffrey Downing.

9 Q And, Mr. Downing, by whom are you employed?

10 A United States Department of Justice, United States
11 Attorney, Middle District of Florida.

12 Q I understand, sir, you have counsel from the
13 Justice Department with you who has some housekeeping issues
14 he'd like to embark upon.

15 MR. LEE: I'm Ralph Lee from the Jacksonville
16 office of the U.S. Attorney's Office from the Middle
17 District of Florida; and Mr. Downing is here subject to
18 a subpoena in his capacity as an Assistant U.S.
19 Attorney; and in that regard under Federal guidelines,
20 his testimony has been what we call scoped. That means
21 he's allowed to talk about certain things and not
22 others; and in that regard I'll put into the record what
23 I'll mark as U.S. Attorney Exhibit Number 1, a December
24 18, 2003, letter to Mr. Pillans signed by the U.S.
25 Attorney Paul Perez identifying the scope of the

1 testimony Mr. Downing will be permitted to testify to
2 today; and here's a copy for counsel.

3 And U.S. Attorney Exhibit Number 2 will be a
4 December 18, 2003, letter also as to Virginia Houser of
5 Mr. Weinstein's firm. It's also signed by Mr. Perez
6 that essentially stands for the proposition that
7 Mr. Weinstein's firm can inquire into the same scope of
8 subject matters that Mr. Pillans has been requested to
9 do so on behalf of the JQC; and if I didn't say before,
10 that's U.S. Attorney Number 2.

11 And with that the only other thing is that we
12 didn't mention until after the record last time that the
13 U.S. Attorney requests that the document -- the
14 transcript of the deposition if it's transcribed be
15 provided at no cost to the U.S. Attorney Mr. Downing and
16 that he will be signing and reading, rather than
17 waiving.

18 MR. PILLANS: Do you have a copy?

19 MR. LEE: I'm sorry. I didn't give it to you?

20 MR. PILLANS: No.

21 (Marked by the court reporter as U.S. Attorney's
22 Exhibit Numbers 1 and 2.)

23 BY MR. WEINSTEIN:

24 Q Mr. Downing, how long have you been with the United
25 States Attorney's Office, sir?

1 A Seventeen-and-a-half years.

2 Q Okay. And prior to that?

3 A I was in private practice for about six months.

4 Q Okay. Where?

5 A In Pittsburgh.

6 Q With what firms?

7 A Tucker Arensberg.

8 Q And where were you educated, Mr. Downing?

9 A I went to college at Allegheny College in

10 Meadville, Pennsylvania; and I went to law school at

11 Duquesne University in Pittsburgh.

12 Q What is your current assignment within the U.S.

13 Attorney's Office?

14 A I am assigned to the General Crimes Section.

15 Q Okay. Did there come a point in time when you

16 learned of a controversy or issue regarding Judge Holder

17 from Jeff Del Fuoco?

18 A Yes.

19 Q Okay. And approximately, when was that, sir?

20 A Approximately, early 2002.

21 Q And prior to that event or events, Mr. Downing, did

22 you know who Judge Holder was?

23 A Yes, I did.

24 Q Okay. And how did you happen to know?

25 A Probably, from reading newspapers.

1 Q Okay. Did you ever meet Judge Holder?

2 A No.

3 Q And as you sit here today, have you ever met him?

4 A I never met him. I spoke to him one time.

5 MR. LEE: Let me confer with him. I just realized
6 by him looking at me I didn't give him one piece of
7 advice.

8 MR. WEINSTEIN: Sure.

9 (A brief pause was had.)

10 BY MR. WEINSTEIN:

11 Q Mr. Downing, directing your attention to early
12 2002, what is it that Jeff Del Fuoco told you -- first told
13 you regarding Judge Holder?

14 MR. LEE: There's a scope issue with that, but you
15 can answer within the scope if you can talk about the
16 matters that are identified in 1 and 2, which have to do
17 with certain papers.

18 A Mr. Del Fuoco told me that he had received two
19 papers that were slipped under his door at the Army Reserve
20 Center. I went to his office. He had the official file in
21 his possession. My recollection is that he opened it on his
22 desk, pulled out two documents, showed them to me; and
23 that's how I learned about it.

24 BY MR. WEINSTEIN:

25 Q Okay. And what documents do you recall Mr. Del

1 Fuoco showing you, sir?

2 MR. LEE: Can he refer?

3 MR. WEINSTEIN: Sure. Let the record reflect that
4 the witness is referring to a legal-sized -- what's
5 commonly called a red well manila folder.

6 MR. LEE: And for the record, that's -- It's got
7 the word "Originals" marked on that red well, and that
8 is from the official file of the U.S. Attorney with the
9 two documents that he is about to describe to you.

10 A The documents he showed me were a document that's
11 entitled, Air War College Directorate of Nonresident Studies
12 Air University 8th Edition, An Analysis of the Anglo-
13 American Combined Bomber Offensive in Europe During World
14 War II during 1942 to 1945, By Gregory P. Holder, Lieutenant
15 Colonel, U.S. Air Force Reserve. There are additional
16 writings on there. If you want me to read the whole thing,
17 I can. The second document was a document that was a fax to
18 Judge Greg Holder from E. David Hoard from the Office of
19 General Counsel, Department of Air Force, Washington D.C.

20 MR. WEINSTEIN: Okay. Since these are originals,
21 why don't we put exhibit stamps on the last page if
22 counsel has no objection.

23 MR. PILLANS: Off the record for a minute.

24 (A brief discussion was had off the record.)

25 MR. WEINSTEIN: Let's go back on for a second.

1 MR. LEE: Let the record reflect that the United
2 States Attorney is going to tender to the custody of the
3 JQC counsel these actual documents, which I believe you
4 asked Mr. Del Fuoco if he did and I'll proffer are the
5 actual documents that Mr. Del Fuoco -- I'm sorry that
6 you asked Mr. Downing. If you didn't ask him, I'll
7 proffer that these documents that Mr. Downing has with
8 him, the U.S. Attorney is going to relinquish, are the
9 actual documents, he will testify, that he received from
10 Mr. Del Fuoco; and he'll explain later how they ended up
11 in the red well marked, Originals; and we'll tender the
12 red well too. Mr. Downing while we're doing this is
13 actually initialling the back of every page on both of
14 these documents to provide some sort of an
15 authentication chain of custody since we're tendering
16 them to the JQC counsel, and that's at the -- with the
17 concurrence and the deliberation of all parties as to
18 how to so mark them; and after he so does that, he'll be
19 ready to proceed, I suppose.

20 MR. PILLANS: I'd like to ask that he date, not
21 each page but maybe put today's date on the first page
22 that you initial of each of these two documents.

23 MR. WEINSTEIN: No objection.

24 MR. LEE: No. That was the last page, Jeff.

25 Is that okay?

1 MR. PILLANS: Yeah. It was the first page of the
2 initials.

3 MR. LEE: Okay. The first page of the initials.
4 You're correct.

5 You're fine. You're doing okay.

6 MR. PILLANS: On each of the two.

7 MR. WEINSTEIN: Let's go ahead and take a moment
8 and mark this as Respondent's Exhibit 1.

9 MR. LEE: You want to put it on the back page?

10 MR. WEINSTEIN: Yeah.

11 MR. LEE: The rear of the back page, I mean --

12 MR. WEINSTEIN: Yeah.

13 MR. LEE: -- because that's the one that has the
14 date.

15 (Marked by the court reporter as Respondent's
16 Exhibit Numbers 1 and 2.)

17 MR. LEE: You want to mark the red well as 3?

18 (Marked by the court reporter as Respondent's
19 Exhibit Number 3.)

20 MR. WEINSTEIN: Okay. For the record, we have
21 marked as Exhibit -- Respondent's Exhibit Number 1 on
22 the last page the -- what we have referred to in
23 previous depositions as the Hoard Paper; and I'll note
24 for the record it contains highlighting throughout and
25 as Respondent's Exhibit Number 2, what we've referred to

1 in previous depositions as the Purported Holder Paper;
2 and I don't see any highlighting or other marks.

3 BY MR. WEINSTEIN:

4 Q I'm going to slide these across to you,
5 Mr. Downing, and ask you whether these are the documents
6 that were in the file when you first were shown them by Jeff
7 Del Fuoco.

8 A These were the documents that were in the file when
9 I received the file from Mr. Del Fuoco.

10 Q Okay. And at this point since we're back on the
11 record and to add some continuity, you are now in Mr. Del
12 Fuoco's office at the United States Attorney's Office when
13 you first observe Respondent's Number 1 and Respondent's
14 Number 2; correct, sir?

15 A That's correct.

16 Q Okay. Was Respondent's Number 3, which for the
17 record is a legal-size what's commonly referred to as a red
18 well or a folder -- was that with these documents at the
19 time?

20 A It was not.

21 Q What other documents were with Exhibit 1 and 2 at
22 the time you first observed it?

23 A I observed those documents in the official file
24 from the United States Attorney's Office. I also observed
25 at that time some other documents in the file. I observed

1 a --

2 MR. LEE: If they're not associated with these
3 papers, you don't need to describe them, only if
4 they're associated with these papers.

5 A I observed a -- as best I recall, a manila envelope
6 that as I recall was folded in half. It was under the
7 documents.

8 BY MR. WEINSTEIN:

9 Q Okay. What colors?

10 A As best I recall, it was a regular -- I'm trying to
11 find something that's of that color. It looked like a
12 mailing envelope with a light brown -- a light-brown color.

13 Q Okay. Folded in half?

14 A Yes.

15 Q Did you observe any handwriting on that envelope?

16 A No, I didn't and I -- and I couldn't tell you
17 whether it was associated in any way with the documents.

18 All I recall is that I remember seeing it there.

19 Q Okay. Sir, as you sit here today, do you have --
20 Do you have any personal knowledge of the existence of a
21 note in that official file at the time you first observed
22 it?

23 A I did not see any note at the time that Mr. Del
24 Fuoco showed me the documents, Respondent's Exhibits 1 and
25 Exhibits 2. Mr. Del Fuoco told me that he had received them

1 at the Army Reserve Center --

2 Q And by, Them, you mean, again, 1 and 2?

3 A Correct -- that they were in an envelope with a
4 note that had been slipped under the door.

5 Q Okay. But at that time you didn't observe a note;
6 correct, sir?

7 A I did not. To the best of my recollection, I
8 didn't see a note.

9 Q Okay. And as you sit here today, sir, at any time
10 between the time that you first observed Respondent's
11 Exhibits 1 and 2 and the time you sit here today, did you
12 personally observe such a note?

13 A No.

14 Q Okay. Do you have any knowledge, sir, to the
15 extent that such a note ever existed what became of it?

16 A No, I do not.

17 Q Okay. Are you aware of any other witness who has
18 any knowledge of what became of such a note if, in fact, one
19 ever existed?

20 A No.

21 Q With respect to the manila envelope that you've
22 described previously, Mr. Downing, do you have any knowledge
23 about the existence or the current whereabouts, I should
24 say, of that envelope?

25 A No, I don't.

1 Q Have you ever questioned Mr. Del Fuoco about the
2 whereabouts of the envelope?

3 A I believe at one point I asked him if he knew where
4 the envelope was and the note.

5 Q Okay. What was his response?

6 A I believe his response was that it would have been
7 in the file.

8 Q And did you thereafter check the file to determine
9 whether or not the envelope and note were, in fact, present?

10 A I did.

11 Q And what did you find, sir?

12 A I did not find a note and an envelope.

13 Q Okay. And after observing that no such note and no
14 such envelope were present in the file, did you thereafter
15 question Mr. Del Fuoco, again, about their whereabouts?

16 A I don't remember whether I had more than one
17 discussion with Jeff regarding that matter. I believe
18 the -- when that matter first came up, it was with respect
19 to -- to this proceeding --

20 Q Yes, sir.

21 A -- and I cannot recall whether I spoke with Jeff,
22 looked at the file, then spoke with him again. I believe
23 that -- I recall at least talking to him one time where I
24 inquired whether there were any other documents or anything
25 else that would be associated with the file, particularly

1 whether he knew where the envelope and/or the note was.

2 Q Okay. And that's the conversation you recalled to
3 us earlier wherein Mr. Del Fuoco said they should be in the
4 file or words to that effect?

5 A Words to that effect, yes.

6 Q All right. Thank you, sir. Would it be fair to
7 say, Mr. Downing, the U.S. Attorney's Office frequently
8 comes in possession of documents which could be evidence in
9 some type of proceeding?

10 A I think that that's beyond the scope.

11 Q Would it be fair to say, Mr. Downing, that the U.S.
12 Attorney's Office is experienced in maintaining chains of
13 custody with respect to documents?

14 A I believe that's also outside the scope.

15 Q Would it be fair to say, Mr. Downing, that the U.S.
16 Attorney's Office doesn't lose evidence that could be
17 germane to proceedings?

18 A That's also outside the scope.

19 Q Mr. Downing, what forensics, if any, were performed
20 with respect to Exhibits 1 and Exhibits 2?

21 MR. LEE: You can talk about what you did, if
22 anything, in that regard.

23 A I compared the documents simply by looking at one
24 and comparing it to the other. There are -- As you noted
25 earlier, there is some highlighting on Exhibit Number 1,

1 Respondent's Exhibit Number 1.

2 BY MR. WEINSTEIN:

3 Q For the record, that is what we have commonly
4 referred to as the Hoard Paper?

5 A Correct.

6 Q And the highlighting starts for the record on the
7 second page of this exhibit, which is the cover page to the
8 Hoard Paper; and, again, for the record, there is yellow
9 highlighting over the title of the document. Could you tell
10 us, sir, where that highlighting came from?

11 A Yes. When -- After I received the file and these
12 two documents were in the file, I made copies of the
13 documents so that I could have -- I could have copies to
14 compare or to give to other people in the office if they
15 needed to look at them. I took these originals to the
16 copying machine. I made copies. I came back. I had them
17 on my desk, was working on other matters. At one point I
18 grabbed two of the documents, which at that point I -- I
19 thought were copies. I took them. I made the comparison.
20 As I did that, I highlighted through -- through most of the
21 document; and I also made a highlight with respect to the
22 Air Force policy or the disclaimer on the bottom of Page
23 Small Roman Numeral ii in pink highlighter. At some point
24 when I was going to put the file away, I grabbed the
25 documents. I believe there were two copies of each one of

1 the papers. At that point I -- And I believe it was
2 probably because of the way the copy was made -- One, I
3 realized I couldn't see the page number as well. I took the
4 documents. I flipped them over. I could see that the ones
5 that I had copied were -- were stapled in a copier, and the
6 ones that were the originals that I had made the copies from
7 had been stapled, and I took the staples out so that when I
8 flipped them over I could tell that these were the -- these
9 were the originals because they had removed staple marks.

10 Q Okay.

11 A I then took these -- I then took these documents
12 took a red welled folder, this which has been identified as
13 Respondent's Number 3, wrote, Originals, in blue ink on
14 there, took these documents, clipped them together, put them
15 in this file; and they remained in that file.

16 Q Okay. Until you came here today?

17 A They have been taken out of that file on occasion
18 to make copies for Mr. Pillans and for, I believe, the Air
19 Force.

20 Q When you first -- Were the copies, Mr. Downing,
21 that you made that you just described in your testimony of
22 these two documents, Respondent's 1 and 2, were these the
23 first copy of these documents made in the office; and by,
24 The office, I mean the United States Attorney's Office?

25 A They were the first copies made by me.

1 Q Okay. All right, sir. Do you have any knowledge
2 whatsoever whether Mr. Del Fuoco or anyone else in the
3 office made any copies before you did?

4 A No, I don't. My recollection is that there --
5 there was only one other staple hole on the papers when I
6 flipped them over, but I will tell you that I did not
7 examine them that closely to be able to tell you whether
8 they had been -- a staple had been taken out and it had been
9 stapled, you know, at or near or close to where the other
10 staple mark is; and you can see, for example, on these that
11 there are some staple marks that are close. I didn't
12 examine them that closely. I was able to tell very quickly
13 because the other -- The copies did not have any mark at
14 all. They were original copies with a staple -- one staple
15 through them.

16 Q Okay. Applied by the copy machine in your office?

17 A Right.

18 Q All right. Let me make sure I understand your
19 testimony, Mr. Downing. To the best of your knowledge, as
20 you sit here today, when you -- When you unstapled these
21 documents, Respondent's 1 and 2, and made copies, okay,
22 there was only one staple hole to the best of your knowledge
23 in these documents?

24 A To the best of my recollection, and I did not -- As
25 I said, I did not examine them in any detail to be able to

1 tell you specifically whether they had been copied before I
2 got them.

3 Q Right. Okay. And then you unstapled them, made
4 copies; and then you manually restapled them again, sir?

5 A Yes.

6 Q Okay. And thereafter you -- Did you remove the
7 staples when you made copies for Mr. Pillans or the Air
8 Force or whomever?

9 A Yes.

10 Q So on a number of occasions, you have removed the
11 staples, copied these documents and manually restapled them?

12 A Correct.

13 Q Okay. Okay. Okay. Can you give me a time frame,
14 Mr. Downing, as to -- as to when you examined these
15 documents and made the highlighting which appears on
16 Respondent's Exhibit 1?

17 A Sometime after October 21st of 2002 and sometime
18 before early December of 2002.

19 Q Okay. What is the significance of October 21,
20 2002.

21 A October 21, 2002, would have been when the official
22 file was reassigned to me.

23 Q Okay. And I noticed that you glanced at the file
24 when you answered; and by, The file, I mean there's a
25 manila-colored, legal-sized folder sitting on the desk in

1 front of -- between you and your counsel, which at least I
2 can read upside down says, United States Attorney. Is there
3 something on that document or on that folder, I should say,
4 sir, that has that date?

5 MR. LEE: He can -- I will let him look at this
6 document and tell you -- and confirm whether the date
7 appears in it, but nothing in this document -- nothing
8 inside this folder that remains in it right now is
9 subject to disclosure today. It will be beyond the
10 scope --

11 MR. WEINSTEIN: Okay.

12 MR. LEE: -- but he can confirm the date if he
13 needs to.

14 A Yes, there is something in the folder that helps me
15 recall that date.

16 BY MR. WEINSTEIN:

17 Q Okay. To whom had the file been previously
18 assigned before it was reassigned to you on October 21,
19 2002?

20 A Jeff Del Fuoco.

21 Q And can you tell me the circumstances under which
22 the file was reassigned to you? Let me see if I can lay a
23 predicate for that before you --

24 A Okay.

25 Q Prior to October 21, 2002, would the chain of

1 custody of Respondent's Exhibit 1 and Respondent's Exhibit 2
2 and the note and the envelope to the extent that they
3 existed be with Jeff Del Fuoco? Was he the custodian prior
4 to this file being assigned to you?

5 A The -- An official file has documents in it that
6 would be associated with the file. Mr. Del Fuoco would have
7 had the file and any other documents associated with it
8 prior to October 21 of 2002.

9 Q Okay. And am I correct, sir, that Mr. Del Fuoco
10 showed you at least Exhibit 1 and Exhibit 2 early in 2002;
11 and you never saw these documents again until on or about
12 October 21, 2002?

13 A That's correct.

14 Q Okay. And Mr. Del Fuoco had access to that file
15 from early 2002 when you first observed 1 and 2 until
16 October 21 -- on or about October 21, 2002?

17 A The file would have been -- The file would have
18 been assigned to him, and he would have had access to it.

19 Q Not just -- Sorry to be picky; but not just would
20 have; but he did, in fact, have access to it?

21 A Yes.

22 Q Okay. All right. And as a housekeeping matter,
23 can you confirm for me, sir, that there is a file sitting on
24 the desk which we've previously identified but not marked as
25 the United States Attorney's file? Am I correct?

1 MR. LEE: I'll do that. I'll tell you that the
2 file that he's looked at and what he's been referring is
3 the United States Attorney's official file in this
4 matter, but let me make it clear. This is the official
5 file portion I brought with me today that was subject to
6 the scope and any collateral matters to help the witness
7 be of service today.

8 MR. WEINSTEIN: Okay.

9 MR. LEE: There are -- I will say without
10 describing there are many other parts of this file that
11 remain in the U.S. Attorney's Office that in our
12 judgement was not appropriate to bring today.

13 MR. WEINSTEIN: Okay.

14 MR. LEE: So this is not the entire file, but this
15 is the -- what we call the official jacket. This is
16 what a file starts with. This folder here, we just call
17 it official jacket. We call it USAO jacket. It has
18 lots of vernacular; and to be helpful to you, I will say
19 that; but it's only here today to show you and give you
20 an idea what an official file starts like, not what it
21 ends up like.

22 MR. WEINSTEIN: I understand.

23 MR. LEE: To know what it ends up like, you'd have
24 to go see it at Mr. Downing's office; and that's not
25 appropriate.

1 MR. WEINSTEIN: Understood. Okay. So the record
2 is clear, with respect to what you have denominated as
3 the USAO jacket, okay, you will not permit me to inquire
4 regarding the documents that are in the jacket; correct?

5 MR. LEE: Absolutely not. They're beyond the scope
6 of Mr. Perez's authorization.

7 MR. WEINSTEIN: I understand. I just want to make
8 sure we've got a clean record. Okay. And you're not
9 going to let me ask any questions regarding any matters
10 contained within that file?

11 MR. LEE: You mean for you to review it and then
12 ask questions? Absolutely not. It's beyond the scope
13 of Mr. Perez's authorization.

14 MR. WEINSTEIN: Okay. And there is, in fact, sir,
15 so that the record is clear, additional documents that
16 relate to this matter that you have not brought today;
17 right, sir?

18 MR. LEE: Absolutely because they're beyond the
19 scope of Mr. Perez's authorization in this mater.

20 MR. WEINSTEIN: I understand. I just want to make
21 sure the record is clear that we've established that
22 there is a jacket that contains documents that the U.S.
23 Attorney's Office has asserted that are beyond the
24 scope; right? And that there are other documents back
25 at the U.S. Attorney's Office that are beyond the scope

1 as that scope has been determined by Mr. Perez or by his
2 designator?

3 MR. LEE: Absolutely.

4 MR. WEINSTEIN: Okay.

5 MR. LEE: And that's what I'm here to communicate
6 very clearly.

7 MR. WEINSTEIN: Okay. And I understand very
8 clearly. I just want to make sure we've got it on the
9 record.

10 MR. LEE: I think it is.

11 BY MR. WEINSTEIN:

12 Q Okay. Did you have any involvement in what I'll
13 call the Holder matter between early 2002 when Mr. Del Fuoco
14 first showed you Respondent's Exhibit 1 and Exhibit 2 and
15 October 21, 2002, when this matter was assigned to you?

16 (A brief pause was had.)

17 A I think that that's beyond the scope.

18 BY MR. WEINSTEIN:

19 Q Okay. Can you provide any testimony whatsoever
20 regarding the chain of custody of Respondent's Exhibit 1 or
21 Respondent's Exhibit 2 from early 2002 to October 21st,
22 2002? Do you have any personal -- Let me make it cleaner if
23 I may. Do you have any personal knowledge whatsoever of the
24 chain of custody of these documents between early 2002 when
25 you first observed them and October 21st, 2002 or

1 thereabouts when this file was reassigned to you?

2 A When I received the file, there were -- there was
3 this document and this document in it. To the best of my
4 recollection, there were no other copies. These documents
5 being in the file the way it was I considered them to be the
6 original documents.

7 Q Okay. When Mr. Del Fuoco first showed you these
8 documents in early 2002, did you read them word for word?

9 A No, I did not.

10 Q Okay. And so you could not sit here today under
11 oath and tell me that when you looked at these documents on
12 or about October 21, 2002, that you could positively
13 identify them as the documents that Mr. Del Fuoco showed
14 you; correct?

15 A I couldn't do that.

16 Q Okay. Mr. Downing, can you tell me why no
17 fingerprint analysis was done on Exhibit 1 or Exhibit 2?

18 A I believe that's beyond the scope.

19 Q Sir, can you tell me why no DNA analysis was done
20 on Exhibit 1 or Exhibit 2?

21 A That's beyond the scope.

22 Q What did you do -- You took us through the
23 chronology of events, I believe, Mr. Downing; and please
24 correct me if I'm wrong, through making copies of these
25 documents and placing on them the highlighting that is now

1 reflected on Exhibit Number 1; correct?

2 A Correct.

3 Q Okay. What happened after that with respect to
4 these documents?

5 A As I indicated, at the point when I determined that
6 these were the -- after I made the copies upon looking at
7 the staple marks that these were the originals, I placed
8 them into the file folder which is Exhibit Number 3. They
9 remained with the file, which was in my office. I made
10 copies of them on several occasions, once, I believe, to
11 send to the JQC, once to send to the United States Air
12 Force. I believe I made a number of copies from these
13 originals, although it's possible that some of those -- some
14 of the copies that I made could have been from other copies
15 at times but if I -- If I made any other copies from the
16 originals, I made the copy, put the originals back into the
17 red well and had the copies.

18 Q Mr. Downing, the copies that you provided
19 originally to the Florida Judicial Qualifications
20 Commission, were they copies of the original or copies of
21 the copies?

22 A Sir, I don't recall whether -- whether I made a --
23 whether I went back and made another copy of -- from the
24 original or whether I had -- whether I sent one of the
25 original copies that I made or whether I made a copy from

1 one of the copies that I made. I just don't recall. Let me
2 say this. There would have been no -- There would have been
3 no reason for me to believe that if I -- If I took what I'll
4 refer to as the original and made a copy of it on a copy
5 machine, there wouldn't have been any reason for me to
6 believe that if I would have taken the original and made
7 another copy of it that I would have gotten anything better
8 than the first copy. Does that make sense?

9 Q I think I understand what you mean.

10 A I have an original. I have an original. I'm going
11 to make two or three copies of it so I have two or three
12 copies of it. I'm going to send a copy to Mr. Pillans or to
13 the JQC. I don't know whether I sent a copy -- an original
14 or a first generation copy, if you will, of the original or
15 whether I took one of those copies and made a copy of that
16 or whether I went back and took the staple out again and
17 made another copy.

18 Q Okay.

19 A I don't recall which one I did. I wouldn't have
20 had any reason to believe that it would have been any a
21 better copy if I would have gone back and copied from the
22 original again.

23 Q And by original you're referring to -- again, to
24 Respondent's 1, which is the document you believe that Del
25 Fuoco showed you in early 2002?

1 A Correct.

2 Q But in any event, it was the document that was in
3 the file on October 21st, 2002, when the file was reassigned
4 to you?

5 A That's correct.

6 Q Okay.

7 A And just to -- I'm not sure I finished answering
8 your question. I probably made additional copies for other
9 people in my office.

10 Q Okay. Do you have any knowledge regarding what
11 Mr. Del Fuoco did with respect to this matter from early
12 2002 until the time that the file was reassigned to you?

13 (A brief pause was had.)

14 A As it relates to the scope, no.

15 BY MR. WEINSTEIN:

16 Q Okay. Any knowledge -- Let me make sure the
17 record's clear. Any knowledge you would have you would
18 assert would be beyond the scope; correct?

19 A Correct.

20 Q Do you have any knowledge, sir, whether Mr. Del
21 Fuoco removed these documents from the file, from the
22 official file, at any time between early 2002 when you first
23 observed them and upon or about October 21, 2002, when the
24 file was reassigned to you?

25 A I have no knowledge of what Mr. Del Fuoco did with

1 those documents during that time.

2 Q Okay. Were you involved in an investigation of
3 activities at the Hillsborough County Courthouse in which
4 Judge Holder was a cooperating witness?

5 A I believe that's beyond the scope.

6 Q Did you become aware at some point in time that
7 Judge Holder had complained to the Office of Professional
8 Responsibility or other federal authorities about the lack
9 of progress of that investigation?

10 A I believe that's beyond the scope.

11 Q Did you become the -- Under what circumstances did
12 you provide Exhibit 1 and Exhibit 2 to the JQC?

13 (A brief pause was had.)

14 A It was determined that the office would make the
15 referral to the JQC and to the Air Force.

16 BY MR. WEINSTEIN:

17 Q Okay. And did you participate in that
18 determination?

19 A I forwarded the documents to the JQC, and I
20 forwarded them to the Air Force.

21 Q Okay. And did you, in fact, become the complainant
22 as to the JQC investigation?

23 A I don't -- I don't know how the JQC would -- I
24 don't know how the JQC would -- or what they would call
25 that. I -- I authored the letter to the JQC. I signed it.

1 I sent it to them, and I received confirmation that they got
2 it.

3 Q Okay.

4 A If -- I don't know what they would have called
5 that. If that's complainant, then I don't know.

6 MR. WEINSTEIN: Let's go ahead and mark as the next
7 numbered exhibit 3.

8 THE COURT REPORTER: 4.

9 MR. WEINSTEIN: 4.

10 (Marked by the court reporter as Respondent's
11 Exhibit Number 4.)

12 BY MR. WEINSTEIN:

13 Q I understand, Mr. Downing, that there are markings
14 on this document that you probably don't recognize; but does
15 your signature appear on Page 3 of this document?

16 A Yes, it does.

17 Q And absent marks that might have been made on this
18 document after you mailed it, sir, or however you
19 transmitted it, does this document appear to be the December
20 20th, 2002, letter that you sent to the JQC?

21 A The first three pages do. The fourth page appears
22 to be a facsimile transmittal form that was not part of the
23 letter.

24 Q Okay.

25 MR. PILLANS: Can I see that?

1 MR. WEINSTEIN: Yeah. I don't know how that got --
2 I mean, we can remove it by consent of the parties.
3 It's a fax transmittal.

4 MR. PILLANS: Well, what it is is Ms. Houser called
5 me yesterday and asked me to fax her a copy of it; so
6 that's my fax transmittal sheet.

7 MR. WEINSTEIN: No problem. Now we know how it got
8 here.

9 BY MR. WEINSTEIN:

10 Q How did you go about transmitting these documents
11 to the Air Force?

12 A Via letter to -- I believe it was the Office of the
13 Judge Advocate General for the Reserves -- Air Force
14 Reserves, and it was a similar type of letter that was
15 mailed to that individual. I contacted -- I found out
16 who -- who the proper addressee of a letter of that
17 nature -- who that would be directed to, and that's who it
18 was directed to.

19 Q Okay.

20 MR. LEE: I don't think we have that letter with
21 us. We brought matters that were relevant to the JQC
22 proceeding and the documents you requested.

23 MR. WEINSTEIN: Okay. I'm going to keep moving
24 then.

25 MR. LEE: If I find it in my working file if I

1 happen to have a copy, I'll take a look at it; and I'll
2 let you know later; so I suggest you just proceed; but I
3 don't think I have it.

4 MR. WEINSTEIN: That's fine; and we're close to
5 being done, Folks. I've got some questions that, Ralph,
6 I'm sure you're going to advise your client on; but I,
7 nonetheless, am going to ask to make a record. I'm
8 giving you the professional courtesy --

9 MR. LEE: I'll be advising Mr. Perez's employee. I
10 don't know that he's my client.

11 MR. WEINSTEIN: As you wish, Counsel.

12 MR. LEE: But I wouldn't mind if he was.

13 BY MR. WEINSTEIN:

14 Q Mr. Downing, isn't it true that the U.S.
15 Attorney's Office did not pursue an investigation against
16 Judge Holder because the office knew that the papers
17 allegedly slipped under Jeff Del Fuoco's door could not be
18 properly authenticated?

19 MR. PILLANS: Objection. Leading.

20 A That's beyond the scope.

21 BY MR. WEINSTEIN:

22 Q Isn't it true, sir, the United States Attorney's
23 Office didn't pursue an investigation against Judge Holder
24 because the office knew that the papers slipped under Jeff
25 Del Fuoco's door would not be received into evidence under

1 applicable law?

2 MR. PILLANS: Objection. Leading.

3 A Beyond the scope.

4 BY MR. WEINSTEIN:

5 Q Sir, isn't it true that the United States
6 Attorney's Office didn't pursue the investigation against
7 Judge Holder because the United States Attorney's Office had
8 serious doubts about the authenticity of Exhibit 1 and/or
9 Exhibit 2?

10 MR. PILLANS: Objection. Leading.

11 A That's beyond the scope.

12 BY MR. WEINSTEIN:

13 Q Mr. Downing, is it fair to say that Mr. Del Fuoco
14 is a controversial figure within the United States
15 Attorney's Office?

16 MR. PILLANS: Objection. Leading.

17 A That's beyond the scope.

18 BY MR. WEINSTEIN:

19 Q Was Mr. Del Fuoco reassigned from the public
20 corruption section to another section within the criminal
21 division of the U.S. Attorney's Office?

22 A That's beyond the scope.

23 MR. WEINSTEIN: I'll note for the record that the
24 U.S. Attorney's Office allowed Mr. Del Fuoco to testify
25 about these matters.

1 BY MR. WEINSTEIN:

2 Q Sir, was Mr. Del Fuoco reassigned --

3 MR. LEE: Let me just respond to that that
4 whatever -- Nevermind. Go ahead. I'll let it stand.

5 BY MR. WEINSTEIN:

6 Q Sir, isn't it true that Mr. Del Fuoco was
7 transferred out of the criminal division to the civil
8 division?

9 MR. PILLANS: Objection. Leading.

10 A That's beyond the scope.

11 MR. WEINSTEIN: Let me address Counsel's objection
12 on that particular one.

13 BY MR. WEINSTEIN:

14 Q Was Mr. Del Fuoco transferred from the criminal
15 division to the civil division?

16 A That's beyond the scope.

17 MR. PILLANS: I don't think that cures the
18 objection, but that's fine.

19 BY MR. WEINSTEIN:

20 Q Where is Mr. Del Fuoco assigned today within the
21 U.S. Attorney's Office?

22 A I think that's beyond the scope of the letter.

23 Q Sir, a transfer from the criminal division to the
24 civil division is viewed essentially as a demotion within
25 the U.S. Attorney's Office; isn't it?

1 MR. PILLANS: Objection. Leading.

2 A That's beyond the scope.

3 BY MR. WEINSTEIN:

4 Q Is a transfer from the criminal division to the
5 civil division viewed as a positive career move within the
6 U.S. Attorney's Office?

7 MR. PILLANS: Objection. Leading.

8 A Beyond the scope.

9 MR. WEINSTEIN: Let me just check my notes. I
10 think we're probably done.

11 (A brief recess was had.)

12 BY MR. WEINSTEIN:

13 Q Mr. Downing, just a couple more questions.
14 Mr. Downing, a few more questions, if I may, sir. Do you
15 have any personal knowledge whatsoever regarding the chain
16 of custody of Respondent's Exhibit 1 or Respondent's Exhibit
17 2 prior to being shown these documents by Mr. Del Fuoco
18 early in 2002?

19 A Only -- Only to the extent that I've already
20 answered with respect to what Mr. Del Fuoco told me the
21 circumstances were of how he got them.

22 Q Okay. Other than what Mr. Del Fuoco told you, any
23 knowledge whatsoever regarding the chain of custody of these
24 documents prior to being shown them in early 2002?

25 A No.

1 Q Okay. You have no -- Do you have any firsthand
2 knowledge regarding -- regarding the creation of
3 Respondent's Exhibit Number 2?

4 MR. WEINSTEIN: Do you have that clearly?

5 A No.

6 BY MR. WEINSTEIN:

7 Q Do you have any firsthand knowledge regarding the
8 creation of Exhibit Number 2?

9 A No.

10 MR. WEINSTEIN: Okay. I have nothing further.

11 MR. LEE: I have a comment.

12 MR. PILLANS: I have no questions.

13 MR. LEE: I have a comment; and I'd like to just
14 let you know that you're looking at Mr. Perez's trusted
15 representative who happens to be the senior, seventeen-
16 year veteran for the civil division of the Jacksonville
17 office, sir.

18 MR. WEINSTEIN: Okay.

19 MR. LEE: For whatever that's worth.

20 MR. WEINSTEIN: Okay.

21 MR. PILLANS: Stay on the record. It's understood
22 that I'm going to take custody of Exhibits --
23 Respondent's Exhibits 1 and 2, and I'll take the red
24 well they came in and put them back in the red well, and
25 I will have them.

1 MR. WEINSTEIN: So stipulated.

2 MR. PILLANS: And at the hearing on this matter, it
3 will be again shown to Mr. Downing, who will then
4 hopefully identify the initials and the date.

5 MR. WEINSTEIN: And for the record, I have placed
6 Respondent's Exhibits 1 and 2 within Respondent's
7 Exhibit Number 3; and I have tendered custody of those
8 three documents to Mr. Pillans.

9 MR. LEE: And I have highest confidence that both
10 Mr. Del Fuoco and Mr. Downing will not have any
11 questions about their authenticity at the hearing since
12 they're in the custody of esteemed counsel for the JQC.

13 (The deposition concluded at 11:42 a.m.)
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1 CERTIFICATE OF OATH

2 STATE OF FLORIDA)

3 COUNTY OF HILLSBOROUGH)

4

5 I, Penny M. Appleton, Court Reporter, certify that
6 Jeffrey Downing personally appeared before me and was duly
7 sworn.

8 Witness my hand and official seal this day of
9 September, 2004.

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Penny M. Appleton, RPR

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1 C E R T I F I C A T E

2 STATE OF FLORIDA

3 COUNTY OF HILLSBOROUGH

4

5 I, Penny M. Appleton, Court Reporter for the Circuit
6 Court of the Thirteenth Judicial Circuit of the State of
7 Florida, in and for Hillsborough County,

8 DO HEREBY CERTIFY, that I was authorized to and did,
9 report in shorthand the proceedings and evidence in the
10 above-styled cause, as stated in the caption hereto, and
11 that the foregoing pages constitute a true and correct
12 transcription of my shorthand report of said proceedings and
13 evidence.

14 IN WITNESS WHEREOF, I have hereunto set my hand in the
15 City of Tampa, County of Hillsborough, State of Florida,
16 this day of September, 2004.

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Penny M. Appleton, RPR

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1 RE: INQUIRY REGARDING JUDGE HOLDER

2

3 ERRATA SHEET

4

5 I, JEFFREY DOWNING, have read the foregoing deposition
6 given by me on August 31, 2004, in Tampa, Florida.

7 Corrections should be made as follows:

8 PAGE: LINE: ERROR/AMENDMENT AND REASON THEREFOR:

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19 Subject to these corrections, my testimony reads as
20 given by me in the foregoing, signed this day of
21 _____, 2004.

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24

Jeffrey Downing

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